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ESTATE CONSTRUCTION COMPANY, PULTE
7 HOME CORPORATION, AND PULTE
DEVELOPMENT CORPORATION
8

9 **UNITED STATES DISTRICT COURT**
10 **DISTRICT OF NEVADA**

11 CENTEX HOMES, a Nevada general
12 partnership; CENTEX REAL ESTATE
CONSTRUCTION COMPANY, a Nevada
13 corporation; PULTE HOME
CORPORATION, a Michigan corporation;
14 PULTE DEVELOPMENT CORPORATION,
a Michigan corporation
15

16 Plaintiffs,

17 v.

18 NGM INSURANCE COMPANY, a Florida
corporation,
19

20 Defendant.
21

Case No.:

PLAINTIFFS' COMPLAINT FOR:

(1) BREACH OF CONTRACT;

**(2) BREACH OF THE IMPLIED
COVENANT OF GOOD FAITH AND
FAIR DEALING;**

**(3) VIOLATIONS OF NEVADA'S
UNFAIR CLAIMS SETTLEMENT
PRACTICES ACT, NEV. REV. STAT.
ANN. § 686A.310;**

**(4) DECLARATORY RELIEF—DUTY TO
DEFEND.**

JURY DEMAND

22
23 Plaintiffs Centex Homes, Centex Real Estate Construction Company, Pulte Home
24 Corporation, and Pulte Development Corporation (collectively, "Plaintiffs") hereby allege as
25 follows:

26 **PARTIES**

27 1. At all times mentioned herein, Centex Homes was and is a Nevada general
28 partnership with its principal place of business in Atlanta, Georgia. The partners of Centex Homes

1 include (a) Centex Real Estate Corporation, (b) Nomas LLC, and (c) Centex International II, LLC.
2 Centex Homes is, and at all times mentioned herein was, authorized to do business in the State of
3 Nevada.

4 2. At all times mentioned herein, Nomas LLC was and is a Nevada limited liability
5 company with its principal place of business in Atlanta, Georgia. The sole member of Nomas
6 LLC is Centex International II, LLC.

7 3. At all times mentioned herein, Centex International II, LLC, was and is a Nevada
8 limited liability company with its principal place of business in Atlanta, Georgia. The sole
9 member of Centex International II, LLC is Centex LLC, which is also a Nevada limited liability
10 company with its principal place of business in Atlanta, Georgia.

11 4. At all times mentioned herein, the sole member of Centex LLC is Centex Home
12 Corporation, which is a Michigan Corporation with its principal place of business in Atlanta,
13 Georgia.

14 5. At all times mentioned herein, Centex Real Estate Corporation (“Centex RE
15 Corp.”) was and is a Nevada corporation with its principal place of business in Atlanta, Georgia.

16 6. At all times mentioned herein, Centex Real Estate Construction Company was and
17 is a Nevada corporation with its principal place of business in Atlanta, Georgia.

18 7. At all times mentioned herein, Pulte Home Corporation was and is a Michigan
19 corporation with its principal place of business in Atlanta, Georgia.

20 8. At all times mentioned herein, Pulte Development Corporation was and is a
21 Michigan corporation with its principal place of business in Atlanta, Georgia.

22 9. Plaintiffs are informed and believe, and on that basis allege, that Defendant NGM
23 Insurance Company (“NGM”) at all times mentioned herein was and is a Florida corporation with
24 its principal place of business in Jacksonville, Florida. Upon information and belief, NGM is and
25 was at all times mentioned herein eligible to do business as an insurer in the State of Nevada and
26 in the State of Arizona. Plaintiffs are informed that NGM has substantial and continuous contacts
27 with the State of Nevada, including but not limited to, being licensed as a Nevada insurer
28 continuously since 2004, issuing insurance policies to Nevada residents, and appointing Nevada-

1 based insurance agencies to issue policies for NGM in Nevada, giving Nevada courts general
2 jurisdiction over NGM.

3 **JURISDICTION AND VENUE**

4 10. This Court has original jurisdiction over this action founded on diversity of
5 citizenship pursuant 28 U.S.C. § 1332, because the matters in controversy exceed \$75,000.00,
6 exclusive of interest and costs, and because complete diversity exists between Plaintiffs and
7 Defendant.

8 11. Venue is proper in this Court in accordance with 28 U.S.C. § 1391 because this
9 court has personal jurisdiction over the defendant as described in paragraph 9.

10 **GENERAL ALLEGATIONS**

11 12. Plaintiffs are homebuilders that participated in the construction of residential
12 developments in Nevada and Arizona; this dispute relates to seventeen of those developments (the
13 “Developments”).

14 13. Plaintiffs performed no work at the Developments; instead, subcontractors
15 performed all of the work.

16 14. Homeowners in each of the Developments asserted multiple construction defect
17 claims and lawsuits against Plaintiffs.

18 15. Plaintiffs tendered each of the claims and lawsuits to NGM under one or more
19 commercial general liability insurance policies issued to one or more subcontractors who
20 performed work for Plaintiffs on the Developments.

21 16. For each of the sixteen claims, NGM acknowledged that it has a duty to defend one
22 or more of the Plaintiffs as additional insureds under one or policies issued by NGM to Plaintiffs’
23 subcontractors.

24 17. Since acknowledging its duty to defend Plaintiffs, NGM has paid nothing toward
25 the Plaintiffs’ defense in thirteen of the sixteen claims; and, in two of the claims has paid only a
26 nominal amount toward Plaintiffs’ defense.

27 **The Subcontractors**

28 18. Stucco Systems, LLC (“Stucco Systems”) subcontracted with one or more of the

1 Plaintiffs to, among other things, supply and install stucco systems in twelve of the sixteen
2 Developments.

3 19. West Coast Air Conditioning, LLC dba Red Rock Mechanical (“West Coast AC”)
4 subcontracted with one or more of the Plaintiffs to, among other things, supply and install heating,
5 ventilation, and air conditioning systems in two of the sixteen Developments.

6 20. Sun Tan Drywall subcontracted with one or more of the Plaintiffs, to, among other
7 things, supply and install drywall in one of the sixteen Developments.

8 21. Cobra Plastering, Inc. (“Cobra Plastering”) subcontracted with one or more of the
9 Plaintiffs, to among other things, supply and install stucco systems in five of the sixteen
10 Developments.

11 22. Anozira Stucco & Stone (“Anozira”) subcontracted with one or more of the
12 Plaintiffs, to among things, supply and install stucco systems in two of the sixteen Developments.

13 23. Whittion Companies (“Whittion”) subcontracted with one or more of the Plaintiffs,
14 to among other things, supply and install rough carpentry/framing in one of the sixteen
15 Developments.

16 **The Stucco Systems Policies**

17 24. Stucco Systems performed work at twelve of the sixteen Developments pursuant to
18 written subcontracts that it entered into with one or more of the Plaintiffs.

19 25. Each subcontract required Stucco Systems to maintain commercial general liability
20 insurance with minimum limits of \$1,000,000 combined single limit per occurrence, \$2,000,000
21 general aggregate, and \$2,000,000 products/completed operations aggregate, and to name one or
22 more of the Plaintiffs, their respective officers, directors, partners, members and employees, as
23 additional insureds under those insurance policies.

24 26. Stucco Systems obtained the following commercial general liability policies from
25 NGM (“the Stucco Systems policies”):

26 Insurer	Policy Number	Policy Period	Named Insured	Additional Insured
27 NGM	MPG2143B	2/1/10 – 2/1/15	Stucco Systems	Pulte Home Corp.; Pulte Development Corp.; Centex Real Estate Construction Co.

27. The Stucco Systems policies were endorsed to cover the Additional Insured Plaintiffs listed above as an “additional insured” with respect to liability arising out of Stucco Systems’ work.

28. The coverage afforded under the Stucco Systems policies require NGM to defend the Additional Insured Plaintiffs listed above against all claims that create potential liability for covered property damage or bodily injury.

The West Coast AC Policies

29. West Coast AC performed work at three of the sixteen Developments pursuant to one or more written subcontracts that it entered into with one or more of the Plaintiffs.

30. Each subcontract required West Coast AC to maintain commercial general liability insurance with minimum limits of \$1,000,000 combined single limit per occurrence, \$2,000,000 general aggregate, and \$2,000,000 products/completed operations aggregate, and to name one or more of the Plaintiffs, their respective officers, directors, partners, members and employees, as additional insureds under those insurance policies.

31. West Coast AC obtained the following commercial general liability policies from NGM (“the West Coast AC policies”):

Insurer	Policy No.	Policy Period	Named Insured	Additional Insured
NGM	MPG3722A	3/24/09 – 3/24/10	West Coast AC	Centex Homes; Centex Real Estate Construction Co.

32. The West Coast AC policies were endorsed to cover the Additional Insured Plaintiffs listed above as an “additional insured” with respect to liability arising out of the work of West Coast AC.

33. The coverage afforded under the West Coast AC policies require NGM to defend the Additional Insured Plaintiffs listed above against all claims that create potential liability for covered property damage or bodily injury.

The Cobra Plastering Policies

34. Cobra Plastering performed work at five of the sixteen Developments pursuant to one or more written subcontracts that it entered into with one or more of the Plaintiffs.

35. Each subcontract required Cobra Plastering to maintain commercial general liability insurance with minimum limits of \$1,000,000 combined single limit per occurrence, \$2,000,000 general aggregate, and \$2,000,000 products/completed operations aggregate, and to name one or more of the Plaintiffs, their respective officers, directors, partners, members and employees, as additional insureds under those insurance policies.

36. Cobra Plastering obtained the following commercial general liability policies from NGM (“the Cobra Plastering policies”):

Insurer	Policy Number	Policy Period	Named Insured	Additional Insured
NGM	MPG1882B	12/15/09 – 6/7/10	Cobra Plastering	Pulte Development Corp.; Pulte Home Corp.;

37. The Cobra Plastering policies were endorsed to cover the Additional Insured Plaintiffs listed above as an “additional insured” with respect to liability arising out of Cobra Plastering’s work.

38. The coverage afforded under the Cobra Plastering policies requires NGM to defend the Additional Insured Plaintiffs listed above against all claims that create potential liability for covered property damage or bodily injury.

The Anozira Policies

39. Anozira performed work at one of the sixteen Developments pursuant to one or more written subcontracts that it entered into with one or more of the Plaintiffs.

40. Each subcontract required Anozira to maintain commercial general liability insurance with minimum limits of \$1,000,000 combined single limit per occurrence, \$2,000,000 general aggregate, and \$2,000,000 products/completed operations aggregate, and to name one or more of the Plaintiffs, their respective officers, directors, partners, members and employees, as additional insureds under those insurance policies.

41. Anozira obtained the following commercial general liability policies from NGM (“the Anozira policies”):

Insurer	Policy No.	Policy Period	Additional Insured
NGM	MPG17259	5/25/11 – 5/25/14	Pulte Development Corp., Centex Real Estate Construction Co., and Pulte Home Corp.

42. The Anozira policies were endorsed to cover the Additional Insured Plaintiffs identified above as “additional insureds” with respect to liability arising out of Anozira’s work.

43. The coverage afforded under the Anozira policies requires NGM to defend the Additional Insured Plaintiffs identified above against all claims that create potential liability for covered property damage or bodily injury.

The Whittion Policies

44. Whittion performed work at one of the sixteen Developments pursuant to one or more written subcontracts that it entered into with one or more of the Plaintiffs.

45. Each subcontract required Whittion to maintain commercial general liability insurance with minimum limits of \$1,000,000 combined single limit per occurrence, \$2,000,000 general aggregate, and \$2,000,000 products/completed operations aggregate, and to name one or more of the Plaintiffs, their respective officers, directors, partners, members and employees, as additional insureds under those insurance policies.

46. Whittion obtained the following commercial general liability policies from NGM (“the Whittion policies”):

Insurer	Policy No.	Policy Period	Additional Insured
NGM	MPT0573E	3/30/12 – 3/30/13	Pulte Development Corp., Centex Real Estate Construction Co., and Pulte Home Corp.

47. The Whittion policies were endorsed to cover the Additional Insured Plaintiffs identified above as “additional insureds” with respect to liability arising out of Whittion’s work.

48. The coverage afforded under the Whittion policies requires NGM to defend the Additional Insured Plaintiffs identified above against all claims that create potential liability for covered property damage or bodily injury.

The Sun Tan Drywall Policies

49. Sun Tan Drywall performed work at one of the sixteen Developments pursuant to one or more written subcontracts that it entered into with one or more of the Plaintiffs.

50. Each subcontract required Sun Tan Drywall to maintain commercial general liability insurance with minimum limits of \$1,000,000 combined single limit per occurrence,

\$2,000,000 general aggregate, and \$2,000,000 products/completed operations aggregate, and to name one or more of the Plaintiffs, their respective officers, directors, partners, members and employees, as additional insureds under those insurance policies.

51. Sun Tan Drywall obtained the following commercial general liability policies from NGM (“the Sun Tan Drywall policies”):

Insurer	Policy Number	Policy Period	Additional Insured
NGM	MPG7686A	8/1/09 – 8/1/16	Centex Homes; Centex Real Estate Construction Company

52. The Sun Tan Drywall policies were endorsed to cover the Additional Insured Plaintiffs identified above as “additional insureds” with respect to liability arising out of Sun Tan Drywall’s work.

53. The coverage afforded under the Sun Tan Drywall policies requires NGM to defend the Additional Insured Plaintiffs identified above against all claims that create potential liability for covered property damage or bodily injury.

The Adams Action

54. On February 19, 2016, homeowners in the Horizon Park development in North Las Vegas, Nevada filed a construction defect complaint entitled *Joseph A. & Judi R. Adams, et al. v. Centex Homes*, District Court, Clark County, Nevada, Case No. A-16-732116-D (“Adams”), against Centex alleging, among other things, that homes in the development contain defective and negligent design, engineering, materials, and construction, and that these defects caused property damage for which Plaintiff Centex Homes (“Centex”) is liable.

55. The *Adams* complaint, pre-litigation NRS Chapter 40 notices of construction defects, and expert reports produced in the *Adams* action allege that the work of West Coast AC caused property damage to the work of others.

56. The *Adams* complaint, pre-litigation NRS Chapter 40 notices of construction defects, and expert reports in the *Adams* action were provided to NGM by Centex and should have been considered by NGM when making its coverage decision.

57. Centex tendered the defense and indemnity of the *Adams* claim to NGM under the

1 West Coast AC policies on or around November 9, 2015.

2 58. After a delay of ten months, NGM acknowledged its duty to defend Centex in the
 3 *Adams* action under the West Coast AC policies on or around August 11, 2016.

4 59. On June 27, 2017, NGM improperly withdrew its defense of Centex in the *Adams*
 5 action alleging that there were no allegations of property damage related to West Coast AC's
 6 work, even though none of the allegations had changed from the time NGM acknowledged its
 7 duty to defend Centex to the date on which NGM improperly withdrew its defense.

8 60. NGM has paid only \$2,000 towards Centex's defense in the *Adams* matter, even
 9 though NGM owes Centex more than \$200,000 in defense fees as of the date of the filing of this
 10 complaint. Centex will continue to incur defense fees and costs in the *Adams* action.

11 61. As a result of the claims alleged in the *Adams* action and NGM's failure to defend
 12 Centex, Centex has incurred and will continue to incur significant costs, including, but not limited
 13 to, forensic, investigative, and repair costs, attorneys' fees and other expenses.

14 **The Adell Action**

15 62. On April 24, 2015, homeowners in the Paseo Pointe development in Phoenix,
 16 Arizona filed a construction defect complaint entitled *Chris Adell, et al. v. Pulte Home*
 17 *Corporation*, Superior Court, Maricopa County, Arizona, Case No. CV2015-051756 ("*Adell*"),
 18 against Pulte Home Corporation ("*Pulte*") alleging, among other things, that homes in the
 19 development contained defective and negligent design, engineering, materials, and construction,
 20 and that these defects caused damage for which Pulte is liable.

21 63. The *Adell* complaint and expert reports produced in the *Adell* action allege that the
 22 work of Stucco Systems caused property damage to the work of others.

23 64. The *Adell* complaint and expert reports in the *Adell* action were provided to NGM
 24 by Pulte and should have been considered by NGM when making its coverage decision.

25 65. Pulte tendered the defense and indemnity of the *Adell* claim to NGM under the
 26 Stucco Systems policies on or around May 28, 2015.

27 66. After a delay of over three months, NGM wrongfully denied Pulte's tender of the
 28 *Adell* claim under the Stucco Systems policies on September 16, 2015. Over a year and a half

1 later, on March 1, 2018, NGM acknowledged its duty to defend Pulte in the *Adell* action under the
 2 Pacific Stucco policies, even though none of the allegations in *Adell* had changed since NGM
 3 wrongfully denied Pulte's tender.

4 67. Despite acknowledging its duty to defend Pulte in the *Adell* action, NGM has paid
 5 nothing towards Pulte's defense.

6 68. NGM purports to assign separate defense counsel to Pulte in the *Adell* action.
 7 However, NGM delayed in acknowledging its duty to defend Pulte and by so doing waived any
 8 right it may have had to assign counsel to defend Pulte. Furthermore, there are conflicts of interest
 9 between NGM and Pulte which entitle Pulte to independent counsel.

10 69. As a result of the claims alleged in the *Adams* action and NGM's failure to provide
 11 Pulte with a defense, Pulte has incurred and will continue to incur significant costs, including, but
 12 not limited to, forensic, investigative, and repair costs, attorneys' fees and other expenses.

13 **The Arcibal Action**

14 70. On February 8, 2017, homeowners in the Vista de Montana development in
 15 Buckeye, Arizona filed a construction defect complaint entitled *Virgilio Q. Arcibal, et al. v. Pulte*
 16 *Home Corporation*, Superior Court, Maricopa County, Arizona, Case No. CV2016-054648
 17 ("*Arcibal*"), against Pulte alleging, among other things, that homes in the development contained
 18 defective and negligent design, engineering, materials, and construction, that these defects caused
 19 damages that Pulte is liable for.

20 71. The *Arcibal* complaint and expert reports produced in the *Arcibal* action allege that
 21 the work of Stucco Systems caused property damage to the work of others.

22 72. The *Arcibal* complaint and expert reports in the *Arcibal* action were provided to
 23 NGM by Pulte and should have been considered by NGM when making its coverage decision.

24 73. Pulte tendered the defense and indemnity of the *Arcibal* claim to NGM under the
 25 Stucco Systems policies on or around July 12, 2016.

26 74. After a four-month delay, NGM acknowledged its duty to defend Pulte in the
 27 *Arcibal* action under the Stucco Systems policies on November 15, 2016.

28 75. Despite acknowledging its duty to defend Pulte in the *Arcibal* action, NGM has

1 paid nothing towards Pulte's defense.

2 76. NGM purported to assign separate defense counsel to Pulte in the *Arcibal* action.
3 However, NGM delayed in acknowledging its duty to defend Pulte and by doing so waived any
4 right it may have had assign counsel to defend Pulte. Further, there are conflicts of interest
5 between NGM and Pulte as well as between Pulte and NGM's chosen counsel which entitle Pulte
6 to independent counsel.

7 77. As a result of the claims alleged in the *Arcibal* action and NGM's failure to provide
8 Pulte with a defense, Pulte has incurred and will continue to incur significant costs, including, but
9 not limited to, forensic, investigative, and repair costs, attorneys' fees and other expenses.

10 **The Arguello Action**

11 78. On September 9, 2016, homeowners in the Desert Oasis development in Surprise,
12 Arizona filed a construction defect complaint entitled *Francisco Arguello, et al. v. Centex Homes,*
13 *Centex Real Estate Construction Company*, Superior Court, Maricopa County, Arizona, Case No.
14 CV2016-054383 ("*Arguello*"), against Centex Homes and Centex Real Estate Construction
15 Company (collectively, "Centex entities") alleging, among other things, that homes in the
16 development contained defective and negligent design, engineering, materials, and construction,
17 that these defects caused damages that the Centex entities are liable for.

18 79. The *Arguello* complaint and expert reports produced in the *Arguello* action allege
19 that the work of West Coast AC and Sun Tan Drywall caused property damage to the work of
20 others.

21 80. The *Arguello* complaint and expert reports in the *Arguello* action were provided to
22 NGM by the Centex entities and should have been considered by NGM when making its coverage
23 decision.

24 81. The Centex entities tendered the defense and indemnity of the *Arguello* claim to
25 NGM under the West Coast AC policies and Sun Tan Drywall policies on or around November
26 25, 2015.

27 82. After a ten-month delay, NGM acknowledged its duty to defend the Centex entities
28 in the *Arguello* action under the West Coast AC policies on September 20, 2016.

83. After a thirteen-month delay, NGM acknowledged its duty to defend the Centex entities in the *Arguello* action under the Sun Tan Drywall policies on December 22, 2016.

84. Despite acknowledging its duty to defend the Centex entities in the *Arguello* action, NGM has paid nothing towards the Centex entities' defense.

85. NGM purported to assign separate counsel to defend the Centex entities in the *Arguello* action. However, NGM delayed in acknowledging its duty to defend the Centex entities and by doing so waived any right it may have had to assign counsel to defend the Centex entities. Further, there are conflicts of interest between NGM and the Centex entities as well as between the Centex entities and NGM's chosen counsel which entitle the Centex entities to independent counsel.

86. As a result of the claims alleged in the *Arguello* action and NGM's failure to provide the Centex entities with a defense, the Centex entities have incurred and will continue to incur significant costs, including, but not limited to, forensic, investigative, and repair costs, attorneys' fees and other expenses.

The Banaszewski Action

87. On July 1, 2015, homeowners in the Pecan Creek South development in San Tan Valley, Arizona filed a construction defect complaint entitled *Peter and Andrea L. Banaszewski, et al. v. Centex Homes*, Superior Court, Pinal County, Arizona, Case No. CV2015-01501214 ("*Banaszewski*"), against Centex alleging, among other things, that homes in the development contained defective and negligent design, engineering, materials, and construction, that these defects caused damages that the Centex is liable for.

88. The *Banaszewski* complaint and expert reports produced in the *Banaszewski* action allege that the work of West Coast AC caused property damage to the work of others.

89. The *Banaszewski* complaint and expert reports in the *Banaszewski* action were provided to NGM by Centex and should have been considered by NGM when making its coverage decision.

90. Centex tendered the defense and indemnity of the *Banaszewski* claim to NGM under the West Coast AC policies on or around January 14, 2016.

91. After a five-month delay, NGM acknowledged its duty to defend the Centex entities in the *Banaszewski* action under the West Coast AC policies on June 8, 2016.

92. Despite acknowledging its duty to defend Centex in the *Banaszewski* action, NGM has paid nothing towards Centex's defense.

93. NGM purported to assign separate counsel to defend Centex in the *Banaszewski* action. However, NGM delayed in acknowledging its duty to defend Centex and by doing so waived any right it may have had to assign counsel to defend Centex. Further, there are conflicts of interest between NGM and Centex as well as between Centex and NGM's chosen counsel which entitle Centex to independent counsel.

94. As a result of the claims alleged in the *Banaszewski* action and NGM's failure to provide Centex with a defense, Centex has incurred and will continue to incur significant costs, including, but not limited to, forensic, investigative, and repair costs, attorneys' fees and other expenses.

The Bandoni Action

95. On June 9, 2016, homeowners in the Martin Valley development in Coolidge, Arizona filed a construction defect complaint entitled *Carmen Mark Bandoni, et al. v. Pulte Home Corporation; Pulte Development Corporation*, Superior Court, Pinal County, Arizona, Case No. CV201601001 ("*Bandoni*"), against Pulte Home Corporation and Pulte Development Corporation (collectively, the "Pulte entities") alleging, among other things, that homes in the development contained defective and negligent design, engineering, materials, and construction, that these defects caused damages that the Pulte entities are liable for.

96. The *Bandoni* complaint and expert reports produced in the *Bandoni* action allege that the work of Cobra Plastering caused property damage to the work of others.

97. The *Bandoni* complaint and expert reports in the *Bandoni* action were provided to NGM by the Pulte entities and should have been considered by NGM when making its coverage decision.

98. The Pulte entities tendered the defense and indemnity of the *Bandoni* claim to NGM under the Cobra Plastering policies on or around October 9, 2015.

1 99. After an eight-month delay, NGM acknowledged its duty to defend the Pulte
2 entities in the *Bandoni* action under the Cobra Plastering policies on June 10, 2016.

3 100. Despite acknowledging its duty to defend the Pulte entities in the *Bandoni* action,
4 NGM has paid nothing towards the Pulte entities' defense.

5 101. NGM purported to assign separate counsel to defend the Pulte entities in the
6 *Bandoni* action. However, NGM delayed in acknowledging its duty to defend the Pulte entities
7 and by doing so waived any right it may have had to assign counsel to defend the Pulte entities.
8 Further, there are conflicts of interest between NGM and the Pulte entities as well as between the
9 Pulte entities and NGM's chosen counsel which entitle the Pulte entities to independent counsel.

10 102. As a result of the claims alleged in the *Bandoni* action and NGM's failure to
11 provide the Pulte entities with a defense, the Pulte entities have incurred and will continue to incur
12 significant costs, including, but not limited to, forensic, investigative, and repair costs, attorneys'
13 fees and other expenses.

14 **The Banning Action**

15 103. On May 19, 2017, homeowners in the White Tank Foothills development in
16 Maricopa County, Arizona filed a construction defect complaint entitled *Ronnie & Yirong*
17 *Banning, et al. v. Pulte Home Corporation and Pulte Development Corporation*, Superior Court,
18 Maricopa County, Arizona, Case No. CV2017-007142 ("*Banning*"), against Pulte Home
19 Corporation and Pulte Development Corporation (collectively, "Pulte entities") alleging, among
20 other things, that homes in the development contained defective and negligent design, engineering,
21 materials, and construction, that these defects caused damages that the Pulte entities are liable for.

22 104. The *Banning* complaint and expert reports produced in the *Banning* action allege
23 that the work of Stucco Systems caused property damage to the work of others.

24 105. The *Banning* complaint and expert reports in the *Banning* action were provided to
25 NGM by the Pulte entities and should have been considered by NGM when making its coverage
26 decision.

27 106. The Pulte entities tendered the defense and indemnity of the *Banning* claim to
28 NGM under the Stucco Systems policies on or around May 5, 2017.

107. After a three-month delay, NGM acknowledged its duty to defend the Pulte entities in the *Banning* action under the Stucco Systems policies on August 15, 2017.

108. Despite acknowledging its duty to defend the Pulte entities in the *Banning* action, NGM has paid nothing towards the Pulte entities' defense.

109. NGM purported to assign separate counsel to defend the Pulte entities in the *Banning* action. However, NGM delayed in acknowledging its duty to defend the Pulte entities and by doing so waived any right it may have had to assign counsel to defend the Pulte entities. Further, there are conflicts of interest between NGM and the Pulte entities as well as between the Pulte entities and NGM's chosen counsel which entitle the Pulte entities to independent counsel.

110. As a result of the claims alleged in the *Banning* action and NGM's failure to provide the Pulte entities with a defense, the Pulte entities have incurred and will continue to incur significant costs, including, but not limited to, forensic, investigative, and repair costs, attorneys' fees and other expenses.

The Brown Arbitration

111. On November 7, 2017, homeowners in the Sun City Festival development in Buckeye, Arizona, including the lead claimants, Carl T. and Linda S. Brown, filed an arbitration demand with the American Arbitration Association against Pulte ("*Brown*"), alleging, among other things, that homes in the development contained defective and negligent design, engineering, materials, and construction, that these defects caused damages that Pulte is liable for.

112. The *Brown* pre-litigation notices, arbitration demand, and expert reports produced in *Brown* allege that the work of Stucco Systems and Cobra Plastering caused property damage to the work of others.

113. The *Brown* pre-litigation notices, arbitration demand, and expert reports were provided to NGM by Pulte and should have been considered by NGM when making its coverage decision.

114. Pulte tendered the defense and indemnity of the *Brown* claim to NGM under the Stucco Systems and Cobra Plastering policies on or around November 21, 2016.

115. After a five-month delay, NGM acknowledged its duty to defend Pulte in *Brown*

1 under the Stucco Systems policies and the Cobra Plastering policies on April 14, 2017.

2 116. Despite acknowledging its duty to defend Pulte in *Brown*, NGM has paid nothing
3 towards Pulte's defense.

4 117. NGM purported to assign separate counsel to defend Pulte in *Brown*. However,
5 NGM delayed in acknowledging its duty to defend Pulte and by doing so waived any right it may
6 have had to assign counsel to defend Pulte. Further, there are conflicts of interest between NGM
7 and Pulte as well as between Pulte and NGM's chosen counsel which entitle Pulte to independent
8 counsel.

9 118. As a result of the claims alleged in *Brown* and NGM's failure to provide Pulte with
10 a defense, Pulte has incurred and will continue to incur significant costs, including, but not limited
11 to, forensic, investigative, and repair costs, attorneys' fees and other expenses.

12 **The Chavez Action**

13 119. On June 4, 2014, homeowners in the Anthem at Merrill Ranch development in
14 Florence, Arizona filed a construction defect complaint entitled *Joe and Brenda Chavez, et al. v.*
15 *Pulte Home Corporation*, Superior Court, Pinal County, Arizona, Case No. CV2014-01401446
16 ("*Chavez*"), against Pulte alleging, among other things, that homes in the development contained
17 defective and negligent design, engineering, materials, and construction, that these defects caused
18 damages that Pulte is liable for.

19 120. The *Chavez* complaint and expert reports produced in the *Chavez* action allege that
20 the work of Stucco Systems and Cobra Plastering caused property damage to the work of others.

21 121. The *Chavez* complaint and expert reports in the *Chavez* action were provided to
22 NGM by Pulte and should have been considered by NGM when making its coverage decision.

23 122. Pulte tendered the defense and indemnity of the *Chavez* claim to NGM under the
24 Stucco Systems policies and the Cobra Plastering policies on or around October 30, 2014.

25 123. After a delay of a year and a half, NGM improperly denied its Pulte's tender of the
26 *Chavez* action under the Cobra Plastering policies on April 18, 2016.

27 124. More than two years after Pulte tendered its defense to NGM under the Cobra
28 Plastering policies and Stucco Systems policies, NGM acknowledged its duty to defend Pulte in

1 the *Chavez* action under the Cobra Plastering policies and the Stucco Systems policies on
 2 November 8, 2016.

3 125. Despite acknowledging its duty to defend Pulte in the *Chavez* action, NGM has
 4 paid nothing towards Pulte's defense.

5 126. NGM purported to assign separate counsel to defend Pulte in the *Chavez* action.
 6 However, NGM unreasonably delayed in acknowledging its duty to defend Pulte and by doing so
 7 waived any right it may have had to assign counsel to defend Pulte. Further, there are conflicts of
 8 interest between NGM and Pulte as well as between Pulte and NGM's chosen counsel which
 9 entitle Pulte to independent counsel.

10 127. As a result of the claims alleged in the *Chavez* action and NGM's failure to provide
 11 Pulte with a defense, Pulte has incurred and will continue to incur significant costs, including, but
 12 not limited to, forensic, investigative, and repair costs, attorneys' fees and other expenses.

13 **The Castanos Action**

14 128. On November 8, 2016, homeowners in the White Tank Foothills development in
 15 Waddell, Arizona filed a construction defect complaint entitled *Maj Lucas C. Castanos, Jr., et al.*
 16 *v. Pulte Home Corporation*, Superior Court, Maricopa County, Arizona, Case No. CV2016-
 17 054810 ("*Castanos*"), against Pulte alleging, among other things, that homes in the development
 18 contained defective and negligent design, engineering, materials, and construction, that these
 19 defects caused damages that Pulte is liable for.

20 129. The *Castanos* complaint and expert reports produced in the *Castanos* action allege
 21 that the work of Stucco Systems caused property damage to the work of others.

22 130. The *Castanos* complaint and expert reports in the *Castanos* action were provided
 23 to NGM by Pulte and should have been considered by NGM when making its coverage decision.

24 131. Pulte tendered the defense and indemnity of the *Castanos* claim to NGM under the
 25 Stucco Systems policies on or around September 9, 2016.

26 132. After a delay of over three-months, NGM acknowledged its duty to defend Pulte in
 27 the *Castanos* action under the Stucco Systems policies on December 22, 2016.

28 133. Despite acknowledging its duty to defend Pulte in the *Castanos* action, NGM has

1 paid nothing towards Pulte's defense.

2 134. NGM purported to assign separate counsel to defend Pulte in the *Castanos* action.
 3 However, NGM unreasonably delayed in acknowledging its duty to defend Pulte and by doing so
 4 waived any right it may have had to assign counsel to defend Pulte. Further, there are conflicts of
 5 interest between NGM and Pulte as well as between Pulte and NGM's chosen counsel which
 6 entitle Pulte to independent counsel.

7 135. As a result of the claims alleged in the *Castanos* action and NGM's failure to
 8 provide Pulte with a defense, Pulte has incurred and will continue to incur significant costs,
 9 including, but not limited to, forensic, investigative, and repair costs, attorneys' fees and other
 10 expenses.

11 **The Cunningham Action**

12 136. On March 28, 2017, homeowners in the Vista De Montana development in
 13 Buckeye, Arizona filed a construction defect complaint entitled *Brian & Sharon Cunningham, et*
 14 *al. v. Pulte Home Corporation*, Superior Court, Maricopa County, Arizona, Case No. CV2017-
 15 005275 ("*Cunningham*"), against Pulte alleging, among other things, that homes in the
 16 development contained defective and negligent design, engineering, materials, and construction,
 17 that these defects caused damages that Pulte is liable for.

18 137. The *Cunningham* complaint and expert reports produced in the *Cunningham* action
 19 allege that the work of Stucco Systems caused property damage to the work of others.

20 138. The *Cunningham* complaint and expert reports in the *Cunningham* action were
 21 provided to NGM by Pulte and should have been considered by NGM when making its coverage
 22 decision.

23 139. Pulte tendered the defense and indemnity of the *Cunningham* claim to NGM under
 24 the Stucco Systems policies on or around November 22, 2015.

25 140. After a delay of five months, NGM denied Pulte's tender of its defense in
 26 *Cunningham* under the Stucco Systems policies on March 16, 2016.

27 141. After a delay of nearly two years, NGM acknowledged its duty to defend Pulte in
 28 the *Cunningham* action under the Stucco Systems policies on June 28, 2017.

142. Despite acknowledging its duty to defend Pulte in the *Cunningham* action, NGM has paid nothing towards Pulte's defense.

143. NGM purported to assign separate counsel to defend Pulte in the *Cunningham* action. However, NGM unreasonably delayed in acknowledging its duty to defend Pulte and by doing so waived any right it may have had to assign counsel to defend Pulte. Further, there are conflicts of interest between NGM and Pulte as well as between Pulte and NGM's chosen counsel which entitle Pulte to independent counsel.

144. As a result of the claims alleged in the *Cunningham* action and NGM's failure to provide Pulte with a defense, Pulte has incurred and will continue to incur significant costs, including, but not limited to, forensic, investigative, and repair costs, attorneys' fees and other expenses.

The Demiriz Action

145. On July 13, 2017, homeowners in the Paseo Pointe Replat development in Laveen, Arizona filed a construction defect complaint entitled *Cristina Demiriz, et al. v. Pulte Development Corporation, Centex Real Estate Construction Company and Pulte Home Corporation*, Superior Court, Maricopa County, Arizona, Case No. CV2017-010394 ("*Demiriz*"), against Pulte and the Centex entities alleging, among other things, that homes in the development contained defective and negligent design, engineering, materials, and construction, that these defects caused damages that Pulte and the Centex entities are liable for.

146. The *Demiriz* complaint and expert reports produced in the *Demiriz* action allege that the work of Stucco Systems caused property damage to the work of others.

147. The *Demiriz* complaint and expert reports in the *Demiriz* action were provided to NGM by Pulte and the Centex entities and should have been considered by NGM when making its coverage decision.

148. Pulte and the Centex entities tendered the defense and indemnity of the *Demiriz* claim to NGM under the Stucco Systems policies on or around March 30, 2017.

149. After a delay of over eight months, NGM acknowledged its duty to defend Pulte and the Centex entities in the *Demiriz* action under the Stucco Systems policies on February 5,

1 2018.

2 150. Despite acknowledging its duty to defend Pulte and the Centex entities in the
3 *Demiris* action, NGM has paid nothing towards Pulte and the Centex entities' defense.

4 151. NGM purported to assign separate counsel to defend Pulte and the Centex entities
5 in the *Demiris* action. However, NGM unreasonably delayed in acknowledging its duty to defend
6 Pulte and the Centex entities and by doing so waived any right it may have had to assign counsel
7 to defend Pulte and the Centex entities. Further, there are conflicts of interest between NGM and
8 Pulte and the Centex entities as well as between Pulte and the Centex entities and NGM's chosen
9 counsel which entitle Pulte and the Centex entities to independent counsel.

10 152. As a result of the claims alleged in the *Demiris* action and NGM's failure to
11 provide Pulte and the Centex entities with a defense, Pulte and the Centex entities have incurred
12 and will continue to incur significant costs, including, but not limited to, forensic, investigative,
13 and repair costs, attorneys' fees and other expenses.

14 **The Alford Action**

15 153. On April 13, 2017, homeowners in the Mountain Horizons development in Mesa,
16 Arizona filed a construction defect complaint entitled *Kathryn Alford, et al. v. Pulte Home*
17 *Corporation*, Superior Court, Maricopa County, Arizona, Case No. CV2017-003766 ("*Alford*"),
18 against Pulte alleging, among other things, that homes in the development contained defective and
19 negligent design, engineering, materials, and construction, that these defects caused damages that
20 Pulte is liable for.

21 154. The *Alford* complaint and expert reports produced in the *Alford* action allege that
22 the work of Stucco Systems caused property damage to the work of others.

23 155. The *Alford* complaint and expert reports in the *Alford* action were provided to
24 NGM by Pulte and should have been considered by NGM when making its coverage decision.

25 156. Pulte tendered the defense and indemnity of the *Alford* claim to NGM under the
26 Stucco Systems policies on or around April 29, 2016.

27 157. After a delay of nearly five months, NGM improperly denied Pulte's tender on
28 September 8, 2016.

158. After a delay of a year and a half, NGM acknowledged its duty to defend Pulte in the *Alford* action under the Stucco Systems policies on September 11, 2017.

159. Despite acknowledging its duty to defend Pulte in the *Alford* action, NGM has paid nothing towards Pulte's defense.

160. NGM purported to assign separate counsel to defend Pulte in the *Alford* action. However, NGM unreasonably delayed in acknowledging its duty to defend Pulte and by doing so waived any right it may have had to assign counsel to defend Pulte. Further, there are conflicts of interest between NGM and Pulte as well as between Pulte and NGM's chosen counsel which entitle Pulte to independent counsel.

161. As a result of the claims alleged in the *Alford* action and NGM's failure to provide Pulte with a defense, Pulte has incurred and will continue to incur significant costs, including, but not limited to, forensic, investigative, and repair costs, attorneys' fees and other expenses.

The Mendoza Action

162. On June 19, 2015, homeowners in the Anthem at Merrill Ranch development in Mesa, Arizona filed a construction defect complaint entitled *Jose Mendoza., et al. v. Pulte Home Corporation*, Superior Court, Pinal County, Arizona, Case No. CV2015-01501155 ("*Mendoza*"), against Pulte alleging, among other things, that homes in the development contained defective and negligent design, engineering, materials, and construction, that these defects caused damages that Pulte is liable for.

163. The *Mendoza* complaint and expert reports produced in the *Mendoza* action allege that the work of Stucco Systems, Cobra Plastering, and Anozira caused property damage to the work of others.

164. The *Mendoza* complaint and expert reports in the *Mendoza* action were provided to NGM by Pulte and should have been considered by NGM when making its coverage decision.

165. Pulte tendered the defense and indemnity of the *Mendoza* claim to NGM under the Stucco Systems policies, Cobra Plastering policies, and Anozira policies on or around February 2, 2015.

166. After a delay of over five months, NGM improperly denied Pulte's tender under the

1 Stucco Systems policies, Cobra Plastering policies, and Anozira policies on May 23, 2016.

2 167. After a delay of over eight months, NGM acknowledged its duty to defend Pulte in
3 the *Mendoza* action under the Stucco Systems policies, Cobra Plastering policies, and Anozira
4 policies on October 21, 2016.

5 168. Despite acknowledging its duty to defend Pulte in the *Medoza* action, NGM has
6 paid nothing towards Pulte's defense.

7 169. NGM purported to assign separate counsel to defend Pulte in the *Medoza* action.
8 However, NGM unreasonably delayed in acknowledging its duty to defend Pulte and by doing so
9 waived any right it may have had to assign counsel to defend Pulte. Further, there are conflicts of
10 interest between NGM and Pulte as well as between Pulte and NGM's chosen counsel which
11 entitle Pulte to independent counsel.

12 170. As a result of the claims alleged in the *Mendoza* action and NGM's failure to
13 provide Pulte with a defense, Pulte has incurred and will continue to incur significant costs,
14 including, but not limited to, forensic, investigative, and repair costs, attorneys' fees and other
15 expenses.

16 **The Nesbitt Arbitration**

17 171. On March 6, 2015, homeowners in the Sun City Festival development in Buckeye,
18 Arizona, including the lead claimants, Roger and Patti Nesbitt, filed a demand for arbitration of
19 their construction defect claims with the American Arbitration Association against Pulte and Pulte
20 Development Corp. (collectively, the "Pulte entities") alleging, among other things, that homes in
21 the development contained defective and negligent design, engineering, materials, and
22 construction, that these defects caused damages that the Pulte entities are liable for.

23 172. The *Nesbitt* arbitration demand and expert reports produced in the *Nesbitt*
24 arbitration allege that the work of Stucco Systems and Cobra Plastering caused property damage
25 to the work of others.

26 173. The *Nesbitt* arbitration demand and expert reports in the *Nesbitt* arbitration were
27 provided to NGM by the Pulte entities and should have been considered by NGM when making its
28 coverage decision.

174. The Pulte entities tendered the defense and indemnity of the *Nesbitt* claim to NGM under the Stucco Systems policies and the Cobra Plastering policies on or around November 17, 2015.

175. After delays of nearly five months and seven months, NGM improperly denied the Pulte entities' tender under the Stucco Systems policies and the Cobra Plastering policies on April 6, 2016 and June 16, 2016, respectively.

176. After a delay of nearly nine months, NGM acknowledged its duty to defend the Pulte entities in *Nesbitt* under the Stucco Systems policies and the Cobra Plastering policies on August 9, 2016.

177. Despite acknowledging its duty to defend the Pulte entities in *Nesbitt*, NGM has paid nothing towards the Pulte entities' defense.

178. NGM purported to assign separate counsel to defend the Pulte entities in *Nesbitt*. However, NGM unreasonably delayed in acknowledging its duty to defend the Pulte entities and by doing so forfeited any right it may have had to assign counsel to defend the Pulte entities. Further, there are conflicts of interest between NGM and the Pulte entities as well as between the Pulte entities and NGM's chosen counsel which entitle the Pulte entities to independent counsel.

179. As a result of the claims alleged in *Nesbitt* and NGM's failure to provide the Pulte entities with a defense, the Pulte entities have incurred and will continue to incur significant costs, including, but not limited to, forensic, investigative, and repair costs, attorneys' fees and other expenses.

The Anderson/Steeman Action

180. On July 7, 2017, homeowners in the Anthem at Merrill Ranch development in Mesa, Arizona filed a construction defect complaint entitled *Ken & Bettie Anderson., et al. v. Pulte Development Corporation, Centex Real Estate Construction Co. and Pulte Home Corporation*, Superior Court, Pinal County, Arizona, Case No. CV2017-01700827 ("*Anderson*"), against the Pulte entities and Centex alleging, among other things, that homes in the development contained defective and negligent design, engineering, materials, and construction, that these defects caused damages that the Pulte entities and Centex are liable for.

181. The *Anderson* complaint and expert reports produced in the *Anderson* action allege that the work of Stucco Systems, Anozira, and Whitton caused property damage to the work of others.

182. The *Anderson* complaint and expert reports in the *Anderson* action were provided to NGM by Pulte and Centex and should have been considered by NGM when making its coverage decision.

183. Pulte and Centex tendered the defense and indemnity of the *Anderson* claim to NGM under the Stucco Systems policies, Whitton policies, and Anozira policies on or around June 29, 2017.

184. After a delay of seven months, NGM acknowledged its duty to defend Centex and Pulte in the *Anderson* action under the Stucco Systems policies and Anozira policies on January 3, 2018.

185. After a delay of nine months, NGM acknowledged its duty to defend Pulte and Centex in the *Anderson* action under the Whitton policies on June 4, 2018.

186. Despite acknowledging its duty to defend Pulte and Centex in the *Anderson* action, NGM has paid nothing towards Pulte's defense.

187. NGM purported to assign separate counsel to defend Pulte and Centex in the *Anderson* action. However, NGM unreasonably delayed in acknowledging its duty to defend Pulte and Centex and by doing so forfeited any right it may have had to assign counsel to defend Pulte and Centex. Further, there are conflicts of interest between NGM and Pulte and Centex as well as between Pulte and Centex and NGM's chosen counsel which entitle Pulte and Centex to independent counsel.

188. As a result of the claims alleged in the *Anderson* action and NGM's failure to provide Pulte and Centex with a defense, Pulte and Centex have incurred and will continue to incur significant costs, including, but not limited to, forensic, investigative, and repair costs, attorneys' fees and other expenses.

The Stetson Valley Claim

189. On March 7, 2017, homeowners in the Stetson Valley development in Phoenix,

1 Arizona forwarded a pre-litigation notice of construction defects to Pulte (“*Stetson Valley*
 2 *Claim*”), alleging, among other things, that homes in the development contained defective and
 3 negligent design, engineering, materials, and construction, that these defects caused damages that
 4 Pulte is liable for.

5 190. The *Stetson Valley Claim* expert reports produced therein allege that the work of
 6 Stucco Systems caused property damage to the work of others.

7 191. The *Stetson Valley Claim* and expert reports therein were provided to NGM by
 8 Pulte and should have been considered by NGM when making its coverage decision.

9 192. Pulte tendered the defense and indemnity of the *Stetson Valley Claim* claim to
 10 NGM under the Stucco Systems policies on or around October 25, 2017.

11 193. After a delay of over eight months, NGM acknowledged its duty to defend Pulte in
 12 the *Stetson Valley Claim* under the Stucco Systems policies on July 2, 2018.

13 194. Despite acknowledging its duty to defend Pulte in the *Stetson Valley Claim*, NGM
 14 has paid nothing towards Pulte’s defense.

15 195. NGM purported to assign separate counsel to defend Pulte in the *Stetson Valley*
 16 *Claim*. However, NGM unreasonably delayed in acknowledging its duty to defend Pulte and by
 17 doing so forfeited any right it may have had to assign counsel to defend Pulte. Further, there are
 18 conflicts of interest between NGM and Pulte as well as between Pulte and NGM’s chosen counsel
 19 which entitle Pulte to independent counsel.

20 196. As a result of the claims alleged in the *Stetson Valley Claim* and NGM’s failure to
 21 provide Pulte with a defense, Pulte has incurred and will continue to incur significant costs,
 22 including, but not limited to, forensic, investigative, and repair costs, attorneys’ fees and other
 23 expenses.

24 **FIRST CAUSE OF ACTION**

25 **Breach of Contract**

26 (By All Plaintiffs Against NGM)

27 197. Plaintiffs reallege the allegations contained in paragraphs 1 through 196, inclusive,
 28 and incorporates them by reference as though fully set forth herein.

198. Plaintiffs requested that NGM defend Plaintiffs against the 15 construction defect claims as described more fully above. Plaintiffs have performed all obligations owing under each of the policies in connection with their tenders of defense, and Plaintiffs have satisfied all relevant conditions precedent.

199. NGM has failed to discharge its contractual duties to defend Plaintiffs against the 15 construction defect claims described herein. More particularly, NGM (1) breached its contracts by failing to promptly respond to Plaintiffs' tenders; (2) breached its contracts by refusing to fully defend Plaintiffs, and in most cases paying nothing towards Plaintiffs' defense although NGM has acknowledged its duty to defend Plaintiffs in all 15 of the construction defect claims; and (3) refuses to acknowledge its duty to provide Plaintiffs with a full and conflict-free defense.

200. As a direct and proximate result of NGM's conduct as alleged in this Complaint, Plaintiffs have been damaged and will continue to be damaged in an amount to be proven at trial.

SECOND CAUSE OF ACTION

Breach of the Implied Covenant of Good Faith and Fair Dealing (By All Plaintiffs Against NGM)

201. Centex realleges the allegations contained in paragraphs 1 through 200, inclusive, and incorporates them by reference as though fully set forth herein.

202. NGM owes Plaintiffs a duty of good faith and fair dealing, obligating NGM to put Plaintiffs' interests equal with or ahead of their own interests and to do nothing to deprive Plaintiffs of policy benefits.

203. Rather than honor its obligations, NGM has instead sought to protect its own interests and has subordinated Plaintiffs' interests by refusing to discharge contractual duties without reasonable grounds or good cause.

204. In addition, NGM has acted with knowledge or reckless disregard of the lack of a reasonable grounds or good cause.

205. Accordingly, NGM has deprived Plaintiffs of their rights and benefits under their policies. For example:

1 a. Pursuant to clearly applicable law, NGM has a duty to promptly investigate
2 and respond to Plaintiffs' tenders and indicate whether it would defend Plaintiffs against the
3 claims involving the Developments. NGM understands and is fully aware of this duty. Despite its
4 knowledge of this obligation, NGM has failed to respond to Plaintiffs' tenders in a timely fashion.
5 On information and belief, these delays violate NGM's own internal policies. To further delay
6 making coverage decisions and avoid assuming the financial burden of defending Plaintiffs, on
7 some occasions NGM requested documents that Plaintiffs had already supplied to NGM so as to
8 force Plaintiffs to continue defending themselves and incurring costs without NGM's support.
9 NGM delayed rendering coverage decisions in conscious disregard of the risk that these delays
10 would jeopardize Plaintiffs' ability to adequately defend themselves against the claims involving
11 the Developments, and would jeopardize Plaintiffs' ability to settle those matters. NGM's
12 decisions to delay responding to Plaintiffs' tenders were motivated by a desire to unfairly enhance
13 its own profits by avoiding contractual obligations and ignoring the contractual rights and
14 economic interests of Plaintiffs. NGM acted in a deliberate and concerted fashion to achieve this
15 self-serving economic objective. NGM's conduct in this regard tortiously breaches the duty of
16 good faith and fair dealing owed to Plaintiffs, and recklessly disregards Plaintiffs' economic and
17 property rights.

18 b. Pursuant to clearly applicable law, NGM has a duty to fully defend
19 Plaintiffs, as opposed to only providing an equitable or partial defense based on the liability of its
20 named insureds. NGM is fully aware of this duty. Despite NGM's knowledge that it has a duty to
21 defend the entirety of the claims related to the Developments pursuant to clearly applicable law, it
22 unreasonably refused to do so. For example, NGM agreed to defend Plaintiffs for all of the
23 claims, but asserts that it only has to provide Plaintiffs with a partial defense in proportion to the
24 liability of NGM's named insureds. NGM's conduct in this regard is unreasonable and tortiously
25 breaches its duty of good faith and fair dealing owed to Plaintiffs.

26 c. NGM has a duty to supply Plaintiffs independent counsel because it cannot
27 provide a conflict free defense. NGM is fully aware of this duty. Despite NGM's knowledge of its
28 duty to supply Plaintiffs independent counsel because of its reservations of rights and the resulting

1 conflicts of interest, NGM has tried to force Plaintiffs to accept new, conflicted defense counsel.
2 NGM's attempts to force Plaintiffs to accept new, conflicted defense counsel are motivated by a
3 desire to enhance unfairly its own profits by avoiding its contractual obligations and ignoring the
4 contractual rights and economic interests of Plaintiffs. NGM acted in a deliberate fashion to
5 achieve this self-serving economic objective. NGM's conduct in this regard tortiously breaches
6 the duty of good faith and faith dealing owed to Plaintiffs and recklessly disregards Plaintiffs'
7 economic and property rights.

8 206. NGM's conduct as alleged in this Complaint is part of a pattern of unfair claims
9 practices intentionally engaged in by NGM to enhance unfairly its own profits by avoiding
10 contractual obligations and ignoring the contractual rights and economic interests of Plaintiffs and
11 other additional insureds. These systematic practices include: (1) failing to respond promptly to
12 tenders from additional insureds; (2) wrongfully denying additional insureds coverage owed under
13 policies; and (3) refusing to supply a full and conflict-free defense to additional insureds as
14 required by law and instead trying to limit coverage obligations to funding only a small fraction of
15 the additional insured's defense.

16 207. As a direct and proximate result of NGM's tortious breach of the duty of good faith
17 and fair dealing, Plaintiffs have suffered damages in an amount to be proven at trial, including
18 without limitation, legal costs incurred to obtain the benefits of the respective policies.

19 208. In addition, NGM's conduct as alleged in this Complaint is despicable and has been
20 carried out in willful and conscious disregard of Plaintiffs' rights and economic interests, and is
21 malicious, fraudulent and oppressive. Accordingly, NGM's conduct entitles Plaintiffs to punitive
22 damages.

23 209. NGM's malicious, fraudulent, and oppressive conduct includes, for example:

24 a. As described above, NGM was fully aware of its duty to promptly
25 investigate and respond to Plaintiffs' tenders and indicate whether it would defend and indemnify
26 Plaintiffs, but instead delayed responding to Plaintiffs' tenders. NGM knows that failing to
27 promptly respond to Plaintiffs' tenders and to immediately defend it violates Plaintiffs' contractual
28 rights, but NGM does so anyway in willful and conscious disregard of Plaintiffs' rights.

b. As described above, NGM is fully aware of its duty to defend additional insureds, like Plaintiffs, and to indemnify them for liability arising out of the work of their named insured, but routinely attempts to skirt these obligations by treating additional insureds differently from its named insureds. NGM knows that this behavior violates the rights of additional insureds, like Plaintiffs, but intentionally tries to deprive additional insureds, like Plaintiffs, of their policy benefits in willful and conscious disregard of their rights.

c. As described above, NGM was and is fully aware of its duty to supply Plaintiffs a full defense as opposed to only providing an equitable or partial defense based on the liability of its named insured. NGM knows that failing to provide Plaintiffs a full defense violates their contractual rights, but NGM intentionally fails to provide a complete defense, in willful and conscious disregard of Plaintiffs' rights.

d. As described above, NGM was and is fully aware of its duty to supply Plaintiffs independent counsel because it cannot provide a conflict-free defense and because it breached its insurance contract by failing to immediately defend Plaintiffs. NGM knows that failing to provide Plaintiffs with independent counsel violates their rights, but intentionally tries to deprive Plaintiffs of independent counsel in willful and conscious disregard of Plaintiffs' rights.

THIRD CAUSE OF ACTION

Violations of Nevada's Unfair Claims Settlement Practices (By All Plaintiffs Against NGM)

210. Plaintiffs reallege the allegations contained in paragraphs 1 through 209, inclusive, and incorporates them by reference as though fully set forth herein.

211. NGM's conduct constitutes a violation of one or more of the following sub-sections of Nev. Rev. Stat. Ann. § 686A.310:

a. Failing to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies.

b. Failing to adopt and implement reasonable standards for the prompt investigation and processing of claims under insurance policies.

1 c. Failing to affirm or deny coverage of claims within a reasonable time after
2 proof of loss requirements have been completed and submitted by the insured.

3 d. Failing to effectuate prompt, fair and equitable settlements of claims in
4 which liability of the insurer has become reasonably clear.

5 e. Compelling insureds to institute litigation to recover amounts due under an
6 insurance policy by offering substantially less than the amounts ultimately recovered in actions
7 brought by such insureds when the insureds have made claims for amounts reasonably similar to
8 the amounts ultimately recovered.

9 f. On information and belief, NGM has engaged in other conduct in the
10 handling of the claims related to the Developments that constitutes unfair practices under other
11 provisions of NRS 686A.310.

12 212. As a direct and proximate result of NGM's violations of Nev. Rev. Stat. Ann. §
13 686A.310, Plaintiffs have sustained damages in an amount within the jurisdictional limits of this
14 Court, including, but not limited to, punitive damages.

15 213. As a direct and proximate result of NGM's violations of Nev. Rev. Stat. Ann. §
16 686A.310, Plaintiffs have incurred attorneys' fees, court costs and other expenses in bringing this
17 action.

18 **FOURTH CAUSE OF ACTION**
19 **(Declaratory Relief)**

20 214. Plaintiffs reallege the allegations contained in paragraphs 1 through 213, inclusive,
21 and incorporates them by reference as though fully set forth herein.

22 215. An actual controversy has arisen and now exists between Plaintiffs, on the one
23 hand, and NGM, on the other hand, in that Plaintiffs contend that under the policies described
24 herein, NGM owes a separate and independent duty to promptly provide Plaintiffs with a full and
25 conflict-free defense in the claims related to the Developments.

26 216. Plaintiffs are informed and believe that NGM contend otherwise.

27 217. Plaintiffs desire a judicial determination as follows:

28 a. that NGM owes a separate and independent duty to defend Plaintiffs in each

1 of the claims described herein;

2 b. that the scope of this duty is to provide Plaintiffs with an immediate,
3 conflict-free and full defense;

4 c. that the obligations of NGM to provide Plaintiffs with an immediate,
5 conflict-free, and full defense is not diminished or reduced when other insurers owe Plaintiffs this
6 same duty.

7 d. that NGM must provide Plaintiffs with independent counsel in the claims
8 described herein due to NGM's delay in providing Plaintiffs with a defense and due to the
9 conflicts of interest between NGM and Plaintiffs and the conflicts of interest between Plaintiffs
10 and NGM's chosen counsel.

11 218. A declaratory judgment is both proper and necessary so that the respective rights,
12 duties, and obligations of Centex and Defendants may be determined.

13 **PRAYER**

14 WHEREFORE, Plaintiffs pray for judgment against NGM as follows:

15 1. **FIRST CAUSE OF ACTION:**

- 16 a. For general and specific damages in an amount to be proven at trial;
- 17 b. For all costs and expenses at the full extent permitted by law;
- 18 c. For pre-judgment interest and post-judgment interest at the full extent
19 permitted by law;
- 20 d. For attorneys' fees to the extent recoverable by applicable law; and
- 21 e. For such other and further relief as the Court deems fair and proper.

22 2. **SECOND CAUSE OF ACTION:**

- 23 a. For general and specific damages in an amount to be proven at trial;
- 24 b. For punitive damages at the full extent permitted by law;
- 25 c. For all costs and expenses at the full extent permitted by law;
- 26 d. For pre-judgment interest and post-judgment interest at the full extent
27 permitted by law;
- 28 e. For attorneys' fees to the extent recoverable by applicable law; and

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f. For such other and further relief as the Court deems fair and proper.

3. **THIRD CAUSE OF ACTION:**

a. For general and specific damages in an amount to be proven at trial;

b. For punitive damages at the full extent permitted by law;

c. For all costs and expenses at the full extent permitted by law;

d. For pre-judgment interest and post-judgment interest at the full extent permitted by law;

e. For attorneys' fees to the extent recoverable by applicable law; and

f. For such other and further relief as the Court deems fair and proper.

4. **FOURTH CAUSE OF ACTION:**

a. For declaratory relief as described above;

b. For all costs and expenses at the full extent permitted by law;

c. For pre-judgment interest and post-judgment interest at the full extent permitted by law;

d. For attorneys' fees to the extent recoverable by applicable law; and

e. For such other and further relief as the Court deems fair and proper.

DATED: July 23, 2018

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By /s/ Sarah J. Odia

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JURY DEMAND

Plaintiffs hereby demand a trial by jury.

Respectfully submitted,

DATED: July 23, 2018

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